

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 10-844

_____)
The Northbridge Companies, LLC,)
Appellant)
)
v.)
)
Town of Tewksbury,)
Appellee)
_____)

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to M.G.L. c. 143, § 100 and 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant asks the Board to grant a variance from 780 CMR 1008.1.8.6 for property at 2000 Emerald Court, Tewksbury, MA. The building code section in question governs the standards and requirements of delayed egress locks.

A hearing relative to this request for variance was convened on February 16, 2010 and was conducted pursuant to 801 CMR 1.02 and M.G.L. c. 30A, §§ 10 and 11. The Appellant's representatives, Shawn Bertram and Chris Chiurri, were present and duly sworn. For the following reasons, the Appellant's request for a variance is hereby **ALLOWED**.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter without objection and reviewed by the Board.

- Exhibit 1: Notice of hearing sent to the Appellant, the Building Commissioner of Town of Tewksbury ("Commissioner"), and Chief Thomas Ryan on February 11, 2010.
- Exhibit 2: State Building Code Appeals Board Appeal Application form filed by the Appellant, dated January 27, 2010.
- Exhibit 3: Letter sent to the Board from the Appellant requesting a variance, dated January 27, 2010.
- Exhibit 4: State Building Code Appeals Board Service Notice, dated January 27, 2010.
- Exhibit 5: Letter sent to the Commissioner from the Appellant, stating that the Appellant plans on requesting a variance from the Board, dated December 2, 2009.

Exhibit 6: Letter from the Commissioner to the Appellant, informing that a request for a variance must be made to the Board, dated January 4, 2010.

Exhibit 7: The floor plan for Bayberry at Emerald Court, the Appellant's property that is at issue.

Exhibit 8: Information on Securitron iMXD delayed exit locking system.

Findings of Fact

Based on the credited testimony of the witness and the plans and documents submitted, the Board finds these facts:

1. The property at issue is an Assisted Living Facility for senior citizens, constructed in 2005 under the 6th Edition MA State Building Code, intended for use groups Assembly A-3 and Residential R-2. (Exhibit 2 & 3)
2. The Appellant is seeking a variance for 4 doors in the 1st floor Special Care Wing and 2 doors in the 2nd floor Special Care Wing. (Exhibit 3)
3. The magnetic doors currently in place were installed according to the 6th Edition state building code, with a manual keypad, alarm mode, and a panic bar that opens the door if 15 lbs of pressure is applied for 15 seconds.
4. The Appellant seeks to modify the above mentioned doors to remove the panic bar feature, so that they are normally remained locked. The modified door can be unlocked by a manual keypad installed to each door or a manual switch in the fire command center. The proposed modified doors would also unlock upon initiation of fire alarm or loss of power to the device on the door. (Exhibit 3)
5. Bayberry at Emerald Court is advertised as an all secured-program, and the Appellant asserted that compliance with the building code would disrupt the operation of the Special Care Unit, because a resident may exit through the doors and get lost in the heavy woods surrounding the facility. (Exhibit 3)
6. The Appellant filed an Appeal to request a variance. (Exhibit 2)
7. Notice of hearing was sent to the Appellant on February 11, 2010. (Exhibit 1)

Analysis

The issue in this case is whether to grant the Appellant a variance from 780 CMR 1008.1.8.6. The relevant code section reads as follows:

The initiation of an irreversible process which will release the latch in not more than 15 seconds when a force of not more than 15 pounds is applied for one second to the release device. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the door lock has been released by the application of force to the releasing device, relocking shall be by manual means only. Exception – Where approved, a delay of not more than 30 seconds is permitted.

780 CMR 1008.1.8.6 Item 4.

A sign shall be provided on the door located above and within 12 inches of the release reading: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15[30] SECONDS.

780 CMR 1008.1.8.6 Item 5.

The Appellant asserted that having the 6 doors in compliance with the code in the Special Care Wings of the assisted living facility would disrupt its operations. Although the facility is staffed 24 hours and the current doors set off an alarm when opened, there are not enough staff members to watch over all residents or react in time in case a resident pushes the panic bar and exits through a door.

Conclusion and Order

The doors that are in compliance with 780 CMR 1008.1.8.6 can potentially compromise the security of the facility, because they allow senior citizen residents to exit the facility unaccompanied. Accordingly, the Appellant's request for a variance is hereby **ALLOWED**, on the condition that there is an override in the fire command center and the doors open in case of emergency.

SO ORDERED.

By the Board:



Alexander MacLeod

William Middlemiss

Douglas Semple

DATED: August 5, 2010

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws, within 30 days of receipt of this decision.

A true copy attest, dated: August 5, 2010

Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

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